

Senate File 2338

H-8507

Amend Senate File 2338, as amended, passed, and reprinted by the Senate, as follows:

1. Page 4, after line 28 by inserting:

<DIVISION

PERFORMANCE-BASED EFFICIENCY CONTRACTS

Sec. _____. NEW SECTION. **8B.1 Legislative intent.**

The general assembly finds that investment in energy conservation measures by public facilities can reduce the amount of energy and other resources consumed by the facilities; reduce ongoing operational costs; improve comfort, reliability, and the indoor environment for employees and citizens; produce a positive environmental impact; enhance revenues generated by governmental units; and create local jobs, producing both immediate and long-term cost savings and other benefits. It is the policy of this state to encourage state agencies, departments, and divisions; public health facilities; public universities and community colleges, school districts, and area education agencies; and counties, municipalities, and other political subdivisions to implement energy conservation and facility improvement measures that reduce energy, water, wastewater, or any other utility or operating costs, and, when economically feasible, build, operate, maintain, or renovate public facilities and systems in a manner that will minimize operational costs and maximize utility savings and other efficiencies. It is additionally the policy of this state to encourage reinvestment of the savings and revenues resulting from energy conservation measures into additional and continued energy conservation efforts through performance-based efficiency contracts and other measures deemed appropriate by a governmental unit.

Sec. _____. NEW SECTION. **8B.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Department*" means the department of administrative services.

2. "*Energy conservation measure*" or "*facility improvement measure*" means a program, facility alteration, equipment installation, remodeling of a new or existing building, or technology upgrade, which is designed to reduce energy, water, wastewater, or other utility or operating costs, or enhance billable revenue, including but not limited to the following:

a. Employee training and occupant behavior modification programs.

b. Insulation of building structures and systems within buildings.

1 c. Windows and window systems, roofs and
2 roofing materials, caulking or weather stripping,
3 installation or modification of doors, heat-absorbing
4 or heat-reflecting applications, or other modifications
5 to windows, doors, or the building envelope, that
6 reduce energy and operating costs.
7 d. Automated or computerized energy or facility
8 control systems.
9 e. Heating, ventilation, and air-conditioning
10 systems, including specialty systems serving food
11 service, laboratory, and other applications.
12 f. Lighting systems and fixtures, including
13 daylighting systems.
14 g. Energy recovery systems.
15 h. Systems that produce steam or forms of energy
16 such as heat in addition to electricity.
17 i. Renewable energy systems or other distributed
18 power generation systems.
19 j. Water and wastewater fixtures, appliances, and
20 equipment.
21 k. Improvements to water distribution, sewer, and
22 wastewater treatment facilities.
23 l. Landscaping measures that reduce watering
24 demands and capture and hold applied water and
25 rainfall.
26 m. Metering or related equipment or systems
27 that improve the accuracy or efficiency of billable
28 revenue-generating systems.
29 n. Automated, electronic, or remotely controlled
30 technologies, systems, or measures that reduce
31 operating costs.
32 o. Installation and modification of software-based
33 systems that reduce facility management or other
34 facility operating costs.
35 p. Programs to reduce energy costs through rate
36 adjustments, load shifting to reduce peak demand, or
37 use of alternative energy suppliers, including but not
38 limited to demand response programs, changes to more
39 favorable rate schedules, negotiation of lower rates
40 or new suppliers, or auditing of utility billing and
41 metering.
42 q. Energy information and control systems that
43 monitor consumption, redirect systems to optimal energy
44 sources, and manage energy-using equipment.
45 r. Any measure not otherwise described in this
46 chapter that is designed to produce utility consumption
47 or operational cost savings, revenue enhancements, or
48 similar efficiency gains to a governmental unit.
49 3. "Governmental unit" means any authority,
50 board, bureau, commission, department, agency, or

1 institution of a government agency, including but
2 not limited to any state agency, or any county,
3 city, district, municipal corporation, municipality,
4 municipal authority, political subdivision, school
5 district, educational institution, incorporated town,
6 township, other incorporated district, or other public
7 instrumentality which has the authority to contract for
8 the construction, reconstruction, alteration, or repair
9 of any public building or other public work or public
10 improvement.

11 4. *"Performance-based efficiency contract"* means a
12 contract between a governmental unit and a qualified
13 provider for the evaluation and recommendation of
14 energy conservation or facility improvement measures
15 and for implementation of one or more such measures.

16 5. *"Qualified provider"* means a person with a
17 record of documented performance-based efficiency
18 contract projects who is experienced in the design,
19 implementation, and installation of energy conservation
20 or facility-improvement measures; and has the
21 technical capabilities to verify that such measures
22 generate energy and operational cost savings or
23 enhanced revenues. A *"qualified provider"* provides
24 a governmental unit with the following information
25 and services in connection with a performance-based
26 efficiency contract:

- 27 a. Project design and specifications.
- 28 b. Construction and construction management.
- 29 c. Commissioning.
- 30 d. Ongoing services as required.
- 31 e. Measurement, verification, and guarantee
32 of savings from energy conservation or
33 facility-improvement measures.

34 Sec. _____. NEW SECTION. 8B.3 Selection of qualified
35 provider — award of performance-based contract —
36 contracting procedures and provisions — funding.

37 1. A governmental unit may enter into a
38 performance-based efficiency contract with a
39 qualified provider in accordance with the provisions
40 of this chapter. The department shall issue a
41 request for proposals to screen and prequalify
42 prospective qualified providers wishing to enter
43 into performance-based efficiency contracts with
44 governmental units. The request for proposals shall
45 include but not be limited to qualified provider
46 documentation of provider expertise and credentials,
47 past experience with performance-based efficiency
48 contracts with governmental units, identification
49 of financial partners, if any, associated with
50 the qualified provider, and the ability to provide

1 and fulfill performance guarantees. Based on the
2 request for proposals, the department shall develop
3 and maintain a list of prequalified qualified
4 providers. A governmental unit seeking to enter into a
5 performance-based efficiency contract with a qualified
6 provider shall either select a qualified provider from
7 the list developed by the department, or shall limit
8 the issuance of a request for proposals to qualified
9 providers contained on the list.

10 2. A governmental unit may select a qualified
11 provider under the procedures specified in subsection
12 1 that best meets the needs of the governmental
13 unit in accordance with criteria established by the
14 governmental unit. After reviewing the qualifications
15 of one or more qualified providers, a governmental
16 unit may enter into a performance-based efficiency
17 contract with a qualified provider if it finds that
18 the amount the governmental unit would spend on the
19 energy conservation and facility-improvement measures
20 recommended in the proposal would not exceed the
21 amount of energy and operational cost savings or
22 revenue enhancements derived from the measures within a
23 twenty-year period from the date of installation.

24 3. A qualified provider to whom a performance-based
25 efficiency contract is awarded shall provide a one
26 hundred percent performance bond to the governmental
27 unit to assure the provider's faithful and complete
28 performance of the contract.

29 4. A performance-based efficiency contract
30 shall include a written guarantee by the qualified
31 provider that the savings and efficiency gains, in the
32 aggregate, will meet or exceed the cost of the energy
33 conservation or facility improvement measures to be
34 implemented under the contract. The qualified provider
35 shall be responsible, pursuant to the performance-based
36 efficiency contract, for measuring and verifying the
37 guaranteed savings and efficiency gains provided by the
38 implemented measures by using one of the measurement
39 and verification methodologies set forth in the
40 international performance measurement and verification
41 protocol. If, due to existing data limitations or the
42 nonconformance of specific project characteristics,
43 none of the methods listed in the international
44 performance measurement and verification protocol
45 is sufficient for measuring guaranteed savings and
46 efficiency gains, the qualified provider shall develop
47 and document an alternate method that is compatible
48 with the protocol.

49 5. An improvement that is not essential or causally
50 connected to an energy conservation measure may be

1 included in a performance-based efficiency contract
2 only to the extent that such expenditures do not,
3 in the aggregate, require the governmental unit to
4 contract for the improvements in a manner other than
5 that specified in the contract.

6 6. A facility alteration which includes
7 expenditures that are required to properly implement
8 other energy conservation measures may be included as
9 part of a performance-based efficiency contract. In
10 such a case, notwithstanding any other provision of
11 law, the installation of these additional measures may
12 be supervised by the qualified provider.

13 7. A governmental unit may enter into an
14 installment payment or lease-purchase agreement to
15 finance costs associated with the performance-based
16 efficiency contract. The qualified provider shall
17 either provide financing directly for the installment
18 payment or lease-purchase agreement or arrange
19 third-party financing. A contract shall provide for
20 all costs to be repaid in full within fifteen years
21 following the date the contract was entered into,
22 subject to extensions of up to five additional years
23 if projected savings sufficient to achieve project
24 repayment do not materialize during the fifteen-year
25 period following the date the contract was entered
26 into. The qualified provider or financing entity
27 shall be responsible for any costs not fully recovered
28 after twenty years. A governmental unit shall use
29 only documented energy savings as identified in
30 the performance-based efficiency contract for the
31 purpose of making installment or lease-purchase
32 payments pursuant to the contract, together with
33 energy efficiency rebates supplied or provided by a
34 public utility, if applicable. If energy savings and
35 rebates are insufficient to fully fund installment
36 or lease-purchase payments, the qualified provider
37 or financing entity shall carry forward the excess
38 to future years. A public utility shall provide all
39 necessary support to facilitate a performance-based
40 efficiency contract, including but not limited to
41 energy use and costs to disclosure to a qualified
42 provider selected by the governmental unit and a
43 financing entity, if applicable.

44 8. Any amount of the performance-based efficiency
45 contract or installment payment or lease-purchase
46 agreements costs that is guaranteed by the qualified
47 provider shall be excluded from any limits or
48 requirements imposed by sections 297.36, 331.402, and
49 384.24A.

50 9. A governmental unit entering into a

1 performance-based efficiency contract shall submit
2 a report to the department by January 1, annually,
3 regarding progress pursuant to the contract, results
4 received, and containing any additional information as
5 specified by the department.>
6 2. By renumbering as necessary.

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